



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

June 18, 2015  
PR 15-39

Mr. Andrew B. Shapiro

**Re: Shapiro v. Town of Warren**

Dear Mr. Shapiro:

The Access to Public Records Act ("APRA") investigation into the above-captioned matter against the Town of Warren ("Town") is complete. By email correspondence dated January 7, 2015, you allege the Town violated the APRA when it failed to respond in a timely manner to the request you made to the Town dated November 10, 2014. The following are the pertinent facts gleaned from the record.

On November 10, 2014, you sent an e-mail to the Town Manager, which stated in its entirety, "I am formally requesting a copy of the attached described Court Order." Attached to your November 10, 2014 e-mail was a letter, which related:

"[i]t is my understanding that the Town of Warren recently went to Court to obtain an Order in the matter of the Touisset Farms Development, GRF Associates, located on Chace Ave.

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It has been inferred that this Order defines the conditions that the Court is imposing on the developer, regarding further work on this project.

This is a formal request for a copy of the Court Order. I am sure that you are aware of citizen's rights under the Freedom of Information Act. It is the hope of

abutters, tax payers and residents of the area, that you will voluntarily provide a copy of this document no later than 1:00 pm on Thursday November 13, 2014.”<sup>1</sup>

Later that same day – November 10, 2014 – the Town Manager replied to your e-mail, copied the e-mail to the Town Solicitor, and indicated to you that “[t]his office is in receipt of your request and have forwarded it for an appropriate APRA response to the Town Solicitor.” After not receiving a response, on January 7, 2015, you filed the instant complaint with this Department, alleging the Town failed to reply to your November 10, 2014 request in a timely manner.

In response to your complaint, we received a substantive response from the Town Solicitor, Anthony DeSisto, Esquire. Mr. DeSisto contends that a proper APRA request was not made because your November 10, 2014 correspondence did not comply with the APRA procedures posted on the Town’s website. Specifically, Mr. DeSisto provides a copy of the Town’s APRA procedures, and, in pertinent part, these procedures provide:

“Please inform the Town Clerk that you wish to make a request for public records. The normal business hours for the Town Clerk’s Office are 9:00 a.m. to 4:00 p.m. Monday through Friday. Town Offices are closed on all holidays.” (Emphasis added).

Mr. DeSisto argues that since you made the request to the Town Manager, rather than the Town Clerk, your November 10, 2014 correspondence does not comply with the Town’s APRA procedures, and therefore, a proper APRA request was not made. Accordingly, Mr. DeSisto contends the Town did not violate the APRA.<sup>2</sup>

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<sup>1</sup> The Freedom of Information Act only applies to documents maintained by federal agencies, and accordingly, it is the APRA that governs this situation. Our conclusion need not examine this issue. Also, although Mr. DeSisto’s response will be provided herein, it bears noting at this point that Mr. DeSisto relates that he did not interpret your November 10, 2014 correspondence as an APRA request since it did not comply with the Town’s APRA procedures and sought production of a document not maintained by the Town (at the time of your request) within three (3) days, rather than the ten (10) business days mandated by APRA. See R.I. Gen. Laws § 38-2-7.

<sup>2</sup> At the time of your request on November 10, 2014, the Town contends that it was not in possession of the court order, or any form of agreement, since a conference or court hearing at which presumably you believed a court order would be entered had not yet been held. Indeed, the evidence suggests that this court conference or hearing was scheduled to take place on November 13, 2014. The APRA does not require a public body to reorganize, create, or compile a non-electronic document that did not exist at the time the request was made. R.I. Gen. Laws § 38-2-3(h)(“[n]othing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made”).

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, “for good cause,” may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. R.I. Gen. Laws § 38-2-7(b). Also, the “[f]ailure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial.” See also R.I. Gen. Laws § 38-2-3(e).

The APRA also mandates that “[e]ach public body shall establish written procedures regarding access to public records,” and these procedures must include “the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body’s website.” R.I. Gen. Laws § 38-2-3(d). Pursuant to this authority, and in accordance with the APRA, the Town promulgated and posted its APRA procedures to its website. The Town’s APRA procedures make clear that an APRA request must be made to the Town Clerk.

On past occasions, this Department has examined situations where citizens made requests, some in accordance with APRA procedures, and others that did not comply with APRA procedures. In Stafford v. Rhode Island Family Court, PR 11-13, we found no violation where the Rhode Island Family Court failed to respond to a request for public records in a timely manner since the request was not made pursuant to the established procedure. Specifically, we observed that because the APRA request was not made in accordance with the Family Court’s promulgated APRA procedures, the Family Court did not violate the APRA.

In contrast, in Fitzmorris v. Portsmouth Town Council, PR 11-20, we examined an oral request for access to documents made during a Town Council meeting. Because the Town failed to promulgate an APRA procedure in accordance with R.I. Gen. Laws § 38-2-3(d), we determined that neither the APRA nor the Town’s non-existent APRA procedures prohibited an oral request, and as such, the oral request constituted a proper APRA request. Because the Town Council had not promulgated APRA procedures, we determined that nothing prohibited the oral APRA request from being considered a properly made APRA request. See id. (“This Department has previously recognized that the APRA does not dictate the method by which a request must be made when a public body has not ‘implemented a specific method by which APRA requests must be made.’”)

In examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our

statutory mandate is limited to determining whether the Town violated the APRA See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

In this case, it is clear from the evidence presented that in accordance with R.I. Gen. Laws § 38-2-3(d), the Town established a procedure whereby all APRA requests must be addressed to the Town Clerk, not addressed to the Town Manager. Respectfully, it is also clear from the evidence presented that your November 10, 2014 correspondence was addressed to the Town Manager, and therefore, in accordance with the APRA, our precedent, and the Town's APRA procedure, your November 10, 2014 correspondence did not constitute a proper APRA request.

You seem to take no issue with our factual determinations, but instead suggest in your January 22, 2015 rebuttal that you were unaware of the Town's APRA procedures and the Town Manager forwarded your request to the Town Solicitor to be treated as an APRA request. While we might have viewed this situation differently had the Town Manager forwarded your November 10, 2014 correspondence to the proper APRA officer, i.e., the Town Clerk, as described, this situation and your arguments differ little from the situation we examined in Access/Rhode Island v. Town of New Shoreham, PR 15-26, where the Town of New Shoreham's APRA procedure required APRA requests to be made with the Town Clerk and in response to an APRA request sent to the Police Chief, the New Shoreham Police Department failed to timely respond. In that situation, like this situation, we conclude that since the APRA request was not made in accordance with the APRA and the Town's properly promulgated/posted APRA procedure, we find no violation.

Although the Attorney General has found no violations, nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing your file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael W. Field', written in a cursive style.

Michael W. Field  
Assistant Attorney General

Cc: Anthony DeSisto, Esquire